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6720 North Scottsdale Road, Suite 261  
Scottsdale, AZ 85253**

**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
THE BOULDERS CASITAS,  
A CONDOMINIUM**

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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
THE BOULDERS CASITAS,  
A CONDOMINIUM**

This Amended and Restated Condominium Declaration for The Boulders Casitas, a condominium, is made on the day hereinafter set forth by The Boulders Casitas Condominium Association, an Arizona nonprofit corporation (the "Association").

**RECITALS**

A. Cachet-Boulders, LLC, an Arizona limited liability company ("Declarant") recorded a Condominium Declaration for The Boulders Casitas, a condominium on February 11, 2005 at Recording No. 2005-0176228, official records of Maricopa County, Arizona Recorder ("Original Declaration").

B. The Original Declaration governs that certain parcel of real property located in Maricopa County, Arizona, described and depicted on Exhibit "A" attached hereto (the "Property"). The Property, together with all improvements and appurtenances thereto will be referred to herein as the "Project."

C. The Association, by and through the Owners, wishes to amend and restate the Original Declaration in its entirety as set forth herein.

D. Therefore, the Association hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interests in the Property or any part thereof; shall inure to the benefit of every portion of the Parcel and any interest therein; and shall inure to the benefit of and be binding upon each Owner and his respective successors in interest.

**ARTICLE 1  
DEFINITIONS**

1.1 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. § 33-1201, et seq., as amended from time to time.

1.2 Defined Terms. The following capitalized terms shall have the general meanings described in the Condominium Act and for purposes of this Declaration shall have the specific meanings set forth below:

1.2.1 “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

1.2.2 “Assessments” means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

1.2.3 “Assessment Lien” means the lien granted to the Association by the Condominium Act to secure the payment of Assessments and related charges owed to the Association.

1.2.4 “Association” means The Boulders Casitas Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

1.2.5 “Board of Directors” means the Board of Directors of the Association.

1.2.6 “Bylaws” means the Bylaws of the Association, as amended from time to time.

1.2.7 “City” means the City of Scottsdale, Arizona, a municipal corporation, its successors and assigns.

1.2.8 “Common Elements” means all portions of the Condominium other than the Units.

1.2.9 “Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.2.10 “Common Expense Assessment” means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.11 “Common Expense Liability” means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.12 “Condominium” means the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this Declaration, together with all Dwellings and other Improvements located thereon.

1.2.13 “Condominium Act” means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

1.2.14 “Condominium Documents” means this Declaration, the Articles, Bylaws and Rules, as they may be amended from time to time.

1.2.15 “Declarant Party” or “Declarant Parties” means collectively Declarant, its members and the affiliates and subsidiaries of Declarant and its members, the officers, directors



and employees of all of the foregoing, and as to Section 11.20 of this Declaration, to the extent such Persons agree to be bound by Section 11.20, any contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Condominium.

1.2.16 “Declaration” means this Amended and Restated Condominium Declaration, as amended from time to time.

1.2.17 “Dwelling” means the single-family residential dwelling built upon a Unit.

1.2.18 “Easement and Operating Agreement” means the Easement and Operating Agreement for the Boulders Casitas dated as of April 13, 2004 and Recorded on April 13, 2004 as Document No. 2004-0390591, as amended and supplemented from time to time.

1.2.19 “First Mortgage” means any mortgage, deed of trust or contract for sale pursuant to the provisions of A.R.S. § 33-741 et seq. on a Unit that has first priority over all other mortgages, deeds of trust and contracts for sale on the same Unit.

1.2.20 “First Mortgagee” means the holder of any First Mortgage.

1.2.21 “Golf Course Easement Agreement” means the Golf Course Easement Agreement dated as of March 17, 2004 and Recorded on April 13, 2004 as Document No. 2004-0390592, as amended and supplemented from time to time.

1.2.22 “Improvement” means any physical building, structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including Dwellings, private drives, parking areas, walkways, pools, spas, paving, fences, walls, monument signs, gates, hedges, plants, trees and shrubs of every type and kind.

1.2.23 “Limited Common Elements” means a portion of the Common Elements specifically designated in this Declaration or on the Plat as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units.

1.2.24 “Maintenance Standard” means the standard of maintenance of Improvements established from time to time by the Board of Directors, which standard shall be equal to or better than the standard established by the Master Association throughout the Master Community.

1.2.25 “Master Association” means Owners Association of Boulders Scottsdale, an Arizona nonprofit corporation, its successors and assigns.

1.2.26 “Master Community” means the master planned residential, commercial, hotel and recreational development known as “The Boulders” lying within the City of Scottsdale, Arizona, as more particularly described in the Master Declaration.

1.2.27 “Master Declarant” means Boulders Joint Venture, an Arizona general partnership, and the successors and assigns of the Master Declarant’s rights and powers under the Master Declaration.

1.2.28 “Master Declaration” means the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Owners Association of Boulders Scottsdale Recorded on August 24, 2012, in Document No. 2012-0761243, as may be amended and supplemented from time to time.

1.2.29 “Master Governing Documents” means collectively the Master Declaration, the Articles of Incorporation and Bylaws of the Master Association and the rules, regulations and design guidelines adopted by the Master Association, all as may be amended and supplemented from time to time.

1.2.30 “Member” means any Person who is or becomes a member of the Association.

1.2.31 “Person” means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.2.32 “Plat” means the Amended and Restated Condominium Plat of the Boulders Casitas, which plat has been Recorded in Book 679 of Maps, page 18, and any amendments, supplements or corrections thereto.

1.2.33 “Recording” means placing an instrument of public record in the Official Records of Maricopa County Recorder, Maricopa County, Arizona, and “Recorded” means having been so placed of public record.

1.2.34 “Reserve Contribution” means the sum deposited in the Reserve Account by each Person as set forth in Section 7.10 of this Declaration.

1.2.35 “Rules” means the rules and regulations adopted by the Association, as amended from time to time.

1.2.36 “Special Assessment” means any assessment levied and assessed pursuant to Section 7.3 of this Declaration.

1.2.37 “Unit” means a portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration.

1.2.38 “Unit Owner” means the Record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit.

Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

1.2.39 “Visible From Neighboring Property” means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of an adjoining Unit, Common Element, Limited Common Element or other property.

## **ARTICLE 2**

### **SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES**

2.1 Submission of Property. All of the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, have been submitted to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is The Boulders Casitas, a condominium.

2.3 Name of Association. The name of the Association is The Boulders Casitas Condominium Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are 1 through 26, inclusive.

2.5 Unit Boundaries. The horizontal boundaries of each Unit are shown on the Plat. The vertical boundaries begin fifteen (15) feet below the approved engineered finished floor elevation and extend twenty-two (22) feet above the approved engineered finished floor elevation as shown on the Plat.

2.6 Allocation of Common Element Interest and Common Expense Liabilities. The undivided interests in the Common Elements and in the Common Expenses of the Association shall be allocated equally among the Units. Accordingly, the undivided interest in the Common

Elements and in the Common Expenses of the Association for each Unit shall be 1/26. In the event the number of Units is changed for any reason, the undivided interests shall be reallocated so that each Unit's undivided interest shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then subject to this Declaration.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote.

2.8 Allocation of Limited Common Elements.

2.8.1 Limited Common Elements 1 through 14, inclusive, are shown on the Plat. Each Limited Common Element is allocated to the Units contiguous thereto, except that Limited Common Element 3 is allocated solely to Unit 5 and Limited Common Element 4 is allocated solely to Unit 6.

2.8.2 A Limited Common Element may be allocated or reallocated by an amendment to this Declaration made in accordance with the provisions of A.R.S. § 33-1218(B) and (C) of the Condominium Act.

2.8.3 The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

### **ARTICLE 3 EASEMENTS**

3.1 Utility Easement. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including water, sewer, natural gas, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, gas lines or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements on the Common Elements.

3.2 Easements for Ingress, Egress and Nature Trail.

3.2.1 Subject to and in common with the rights of other Persons as set forth in Subsections 3.2.2 and 3.2.3 of this Declaration, there is created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across streets as from time to time may be paved and located upon the Common Elements and intended for such purposes, except that such easements shall not extend to any Limited Common Elements. Subject to and in

common with the rights of other Persons as set forth in Subsection 3.2.4 of this Declaration, there are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, trails and lanes that from time to time may exist upon the Common Elements. Such easements shall run in favor of and be for the benefit of the Unit Owners and residents of the Units and their guests, invitees, employees and contractors.

3.2.2 Pursuant to the Plat and the Master Declaration, the owners and members of the Master Association and their guests, invitees, employees and contractors have a perpetual non-exclusive easement for ingress and egress over the streets known as Casitas Way, Casitas Circle South and Clubhouse Drive, all as shown on the Plat.

3.2.3 Pursuant to the Easement and Operating Agreement, the Master Declarant, for its use and the use of the employees, agents, contractors, customers, visitors, invitees, licensees, tenants, subtenants and concessionaires of Master Declarant, has a perpetual, non-exclusive easement upon, over, across and under the street known as Clubhouse Drive, as shown on the Plat, for the purposes of (i) vehicular and pedestrian ingress, egress and access to and from the Resort and the Owner Tract, as such terms are defined in the Easement and Operating Agreement, and (ii) the construction, maintenance, installation, repair and/or replacement of utilities and/or roadways. The use of Clubhouse Drive by Unit Owners, residents of the Units and their guests, invitees, employees and contractors is subject to the covenants, conditions and restrictions set forth in the Easement and Operating Agreement.

3.2.4 Declarant has granted to (i) the Master Declarant, for its use and the use of the employees, customers, visitors, invitees, licensees, agents and contractors of Master Declarant, (ii) the Master Association and the owners and members of the Master Association and their family members, guests and invitees, and (iii) all Unit Owners and their family members, guests and invitees, an easement for ingress and egress for pedestrian traffic over, through and across a portion of the Common Elements (the "Nature Trail Area") located within the Common Elements north of Clubhouse Drive from the western boundary of the Condominium to the eastern boundary of the Condominium and north of Units 1 through 5, inclusive, as shown on the Plat. To this end, the Nature Trail Easement Agreement was Recorded on February 11, 2005 at Document No. 2005-0176836, official records of the Maricopa County, Arizona Recorder (the "Nature Trail Easement Agreement"). Each Unit Owner shall take title to a Unit and the allocated interest in the Common Elements subject to the Nature Trail Easement Agreement. The responsibility for maintaining, repairing and replacing the Nature Trail Area, including all Improvements constructed thereon, and for establishing and enforcing rules and regulations with respect to the use and enjoyment of the Nature Trail Area shall be as set forth in the Nature Trail Easement Agreement. Any Person accepting a deed or acquiring any ownership interest in any of Units 1 through 5 acknowledges and agrees that the Nature Trail Area is in close proximity to such Units and that the use and maintenance of the Nature Trail Area may create noise, dust and infringe upon the privacy of the Unit Owners and residents of such Units. Except as set forth in the Nature Trail Easement, neither the Master Declarant, the Declarant Parties, the Association, the Master Association nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Unit Owner, resident or his family, invitees or licensees for any claims or damages resulting, directly or indirectly, from the operation, existence or maintenance of the Nature Trail Area.

3.3 Exclusive Parking Easement. Pursuant to and subject to the terms of the Easement and Operating Agreement, the Master Declarant, for its use and the use of the employees, agents, contractors, customers, visitors, invitees, licensees, tenants, subtenants and concessionaires of Master Declarant, has a perpetual exclusive easement upon, over, across and under a portion of the Common Elements identified on the Plat as "Parking Easement" (the "Parking Easement Area") for the purposes of (i) vehicular and pedestrian ingress, egress, access and parking of vehicles, in such configuration as determined by Master Declarant, in its sole discretion, so long as in compliance with all rules and regulations of applicable governmental entities, and (ii) the construction, maintenance, installation, repair and/or replacement of utilities and/or parking areas, including the right to build a fence to provide exclusive use by Master Declarant and the permittees of Master Declarant as set forth in this Section. The use of the Parking Easement Area by Unit Owners, residents of the Units and their guests, invitees, employees and contractors is prohibited unless such use is authorized by Master Declarant.

3.4 Unit Owners' Easements of Enjoyment.

3.4.1 Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The rights of other Persons to use the Common Elements as set forth in Sections 3.2 and 3.3 of this Declaration;

(ii) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act;

(iv) All rights and easements set forth in this Declaration;

(v) The right of the Association to suspend the right of a Unit Owner and any resident of such Unit Owner's Unit to use the Common Elements (other than the right of a Unit Owner and any resident to use the streets that are part of the Common Elements for ingress and egress to the Unit Owner's Unit) for reasonable time periods for a violation of any provision of the Condominium Documents by the Unit Owner, lessee or resident and/or their guests.

3.4.2 If a Unit is leased or rented, the lessee and persons residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements (other than the right of a Unit Owner to use the streets which are part of the Common Elements for ingress and egress to the Unit Owner's Unit) until the termination or expiration of the lease.

3.4.3 The guests and invitees of any Unit Owner or other person entitled to use the Common Elements pursuant to Subsection 3.4.1 of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to Subsection 3.4.2 of this Declaration may use the Common Elements provided they are accompanied by a Unit Owner, lessee or other person entitled to use the Common Elements pursuant to Subsection 3.4.1 or Subsection 3.4.2 of this Declaration. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

3.4.4 A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.4.5 The provisions of this Section 3.4 shall not apply to any of the Limited Common Elements that are allocated to one or more but less than all of the Units.

3.5 Easement Over Common Elements and Units in Favor of the Association. The Common Elements and Units (except for the interior of Dwellings) shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of exercising all rights of the Association and discharging all obligations of the Association, including the following:

3.5.1 for inspection, maintenance, repair and replacement of the Common Elements;

3.5.2 for inspection, maintenance, repair and replacement of those portions of the Units for which the Association has such responsibility pursuant to this Declaration;

3.5.3 for correction of emergency conditions on one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units;

3.5.4 for the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents; and

3.5.5 for inspection, at reasonable times and upon reasonable notice to the Unit Owner or a Unit Owner's lessee, of the Units and Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owner or such Unit Owner's lessees and their guests, invitees and other residents of the Unit.

3.6 Easement Over Limited Common Elements in Favor of Unit Owners. The Limited Common Elements are hereby made subject to easements in favor of the Unit Owners to

which such Limited Common Elements have been allocated for the purposes of (i) ingress and egress over the driveway serving the applicable Units, and (ii) for the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owners are obligated to maintain under Section 5.3 of this Declaration.

3.7 Easement for Support. To the extent necessary, each Unit and all Common Elements shall have an easement for structural support over adjacent Units and Common Elements.

3.8 Easement for Unintended Encroachments. To the extent that any Improvement constructed on a Unit, Limited Common Element or Common Element encroaches on any other Unit, Limited Common Element or Common Element as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration, or any reason other than the intentional encroachment on the Common Elements, Limited Common Element or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

3.9 Easement Rights and Other Rights. Notwithstanding anything contained in this Article 3 to the contrary, and subject to the provisions of Section 11.19, the rights of the Association and the rights and easements granted to Unit Owners in this Article 3 are subject to (i) the rights of the Master Declarant and the employees, agents, contractors, customers, visitors, invitees, licensees, tenants, subtenants and concessionaires of Master Declarant pursuant to the provisions of the Easement and Operating Agreement, and (ii) the rights of the Master Association, the owners and members of the Master Association and their guests, invitees, employees and contractors pursuant to the provisions of the Master Declaration.

## **ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS**

4.1 Restrictions Imposed by Master Governing Documents; Obligation to Obtain Approvals.

4.1.1 All Improvements constructed on the Condominium and use of the Units within the Condominium shall be in accordance with the requirements of, and applicable limitations and restrictions set forth in, the Master Governing Documents. Certain provisions of this Article 4 are more restrictive than the provisions set forth in the Master Declaration, and Unit Owners shall be obligated to comply with any such provision that may be more restrictive than the provisions set forth in the Master Declaration. If, in the sole determination of the board of directors of the Master Association, any provision of this Article 4 conflicts with the Master Declaration or the rules, regulations or design guidelines established by the Master Association, or if any provision of this Article 4 is deemed to be less restrictive than the provisions set forth in the Master Declaration or in the rules, regulations or design guidelines established by the Master Association, the Master Declaration shall control and the provisions of this Article 4 shall be enforced the same as the more restrictive provision set forth in the Master Declaration or the rules, regulations and design guidelines established by the Master Association.



4.1.2 Unless otherwise set forth in this Article 4, wherever this Article 4 requires the approval or consent of the Board of Directors, such approval or consent shall not be deemed the approval or consent of the Master Association. Each Unit Owner acknowledges that the Master Governing Documents may require the approval or consent of the Master Association for certain actions, and that such approval or consent required by the Master Governing Documents shall be required in addition to any approval or consent obtained from the Association.

4.2 Residential Use. All Units shall be used, improved and devoted exclusively to residential use. No business or commercial building may be erected on any Unit and no gainful occupation, profession, trade or commercial enterprise or other non-residential use may be conducted on any part thereof, except that an Owner or other Occupant of a Unit may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Unit Owners, Lessees or Occupants in the Condominium; and (e) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Unit Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof in accordance with the restrictions set forth in Section 4.29 hereof shall not be considered a trade or business within the meaning of this Section.

4.3 Nuisances; Construction Activities. No animal waste, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit or Common Element, and no odors or loud noises shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the residents of such other property. No other nuisance shall be permitted to exist or operate upon any Unit which is otherwise improper, detrimental or offensive, to any other property in the vicinity thereof or to the occupants of such other property. Normal construction activities and parking in connection with the building of Improvements on a Unit shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Board of Directors. In addition, any construction equipment and building materials stored or kept on any Unit during the construction of Improvements may be kept only

in areas approved in writing by the Board of Directors, which may also require screening of the storage areas. The Board of Directors in its sole discretion shall have the right to determine the existence of any such nuisance.

4.4 Antennas. Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television, internet or radio signals or any other form of electromagnetic radiation or any associated equipment (a “Device”) shall be erected, used or maintained outdoors on any Unit or Common Elements, whether attached to a Dwelling or structure or otherwise, so as to be Visible From Neighboring Property or the street, unless approved in writing by the Board of Directors. Any Device governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall only be mounted within the Unit or Limited Common Elements allocated to the Unit, shall comply with any applicable antenna installation rules of the Association, shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property or the street, and any visible antennas, masts, and wiring must be painted to match the color of the structure to which they are installed, provided the painting does not interfere with acceptable quality signal and does not void the manufacturer’s warranty. Failure by an Owner to comply with such guidelines, standards and procedures with respect to a Device shall be deemed a violation of this Declaration in the same manner as if a Unit Owner had not obtained the prior written approval from the Board of Directors for a Device that does require prior written approval.

4.5 Flags and Flagpoles. An Owner may install one (1) flagpole on the Unit or Limited Common Elements with the prior written approval of the Association in accordance with Section 4.7 herein and in accordance with the Association Rules. Flags that are required by law to be permitted may be flown on the Unit or Limited Common Elements Visible From Neighboring Property in accordance with the Federal Flag Code (P.L. 94-344). Other flags may be flown only with the prior written approval of the Board of Directors.

4.6 Utility Service. Except as provided by Section 4.4 herein and except for lines, wires and devices existing on the Condominium as of the date of this Declaration and maintenance and replacement of the same, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are installed and maintained underground or concealed in, under, or on Dwellings or other structures permitted under this Declaration. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Dwellings or structures permitted under this Declaration.

4.7 Improvements and Alterations.

4.7.1 No excavation or grading work shall be performed on any Unit without the prior written approval of the Board of Directors.

4.7.2 No Improvement that would be Visible From Neighboring Property at the time it is constructed or would be Visible From Neighboring Property with the passage of time

(such as trees or large bushes and shrubs) shall be constructed or installed on any Unit without the prior written approval of the Board of Directors. No addition, alteration, repair, change or other work that in any way alters the exterior appearance, including the exterior color scheme, of any part of a Unit or any Improvement located thereon (including a Dwelling) that is Visible From Neighboring Property shall be made or done without the prior written approval of the Board of Directors. Any Unit Owner desiring approval of the Board of Directors for the construction, installation, addition, alteration, repair, change or replacement of any Improvement that is or would be with the passage of time Visible From Neighboring Property shall submit to the Board of Directors a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work that the Unit Owner desires to perform, including the distance of such work from neighboring properties, if applicable. Any Unit Owner requesting the approval of the Board of Directors also shall submit to the Board of Directors any additional information, plans and specifications that the Board of Directors may request. If the Board of Directors fails to approve or disapprove an application for approval within sixty (60) days after the application, together with any fee payable pursuant to Section 4.7.6 of this Declaration and all supporting information, plans and specifications requested by the Board of Directors have been submitted to the Board of Directors, the application shall be deemed to have been disapproved. The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the right of the Board of Directors to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

4.7.3 In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work that must be approved by the Board of Directors, the Board of Directors, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Board of Directors may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work that must be approved by the Board of Directors pursuant to this Section 4.7 if the Board of Directors determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with rules, regulations or guidelines established by the Board of Directors; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Condominium or with Improvements previously approved by the Board of Directors but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect another Unit Owner or the appearance of the Condominium; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Condominium.

4.7.4 Upon receipt of approval from the Board of Directors for any construction, installation, addition, alteration, repair, change or other work, the Unit Owner who had requested

such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Board of Directors as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board of Directors or as set forth in the rules, regulations and guidelines established by the Board of Directors.

4.7.5 Any change, deletion or addition to the plans and specifications approved by the Board of Directors must be approved in writing by the Board of Directors.

4.7.6 The Board of Directors shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 4.7, which fee shall be payable at the time the application for approval is submitted to the Board of Directors.

4.7.7 All Improvements constructed on Units shall be of new construction, and no buildings or other structures shall be removed from other locations onto any Unit.

4.7.8 The approval required of the Board of Directors pursuant to this Section 4.7 shall be in addition to, and not in lieu of, any approvals or permits that may be required under any federal, state or local law, statute, ordinance, rule or regulation, including any such approvals and permits as set forth on the Plat. The approval by the Board of Directors of any construction, installation, addition, alteration, change or other work pursuant to this Section 4.7 shall not be deemed a waiver of the right of the Board of Directors to withhold approval of any similar construction, installation, addition, alteration, change or other work subsequently submitted for approval.

4.7.9 The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 4.7 shall not be deemed a warranty or representation by the Board of Directors as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

4.7.10 The Board of Directors may condition its approval of plans and specifications upon the agreement by the Unit Owner submitting such plans and specifications to furnish to the Association a deposit, bond or other security acceptable to the Board of Directors in an amount determined by the Board of Directors to be reasonably sufficient to assure the completion of the proposed Improvements (or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement), ensure compliance with this Declaration, and to protect the Association against any damage to the Common Elements. All or a portion of the deposit, bond or security may be withheld for any of the following purposes: (i) to repair any Common Elements damaged or destroyed by the Owner, its agents, or contractors, (ii) for additional costs and fees incurred by the Board due to incomplete or non-compliant Improvements, (iii) to pay for fines levied for violations related to the Improvements covered by the deposit, (iv) to pay for fines levied for violations committed by vendors or contractors providing goods or services during the course of

construction of the Improvements, and (v) to reimburse the Association for any delinquent Assessments owed by the Owner. Any un-used deposit, bond or security shall be released or be refundable, without interest, to the Unit Owner upon the Unit Owner's written request to the Board of Directors so long as the Board of Directors determines, in its sole and absolute discretion that the Improvements have been completed in accordance with the plans and specifications approved by the Board of Directors. The Association's costs of repairing any Common Elements beyond the construction deposit or bond shall be paid by the Owner upon demand from the Association, and any sum not paid by an Owner may be treated as an Assessment, subject to lien, and collected in like manner as Assessments levied pursuant to this Declaration.

4.8 Trash Containers and Collection; Open Fires. No garbage or trash shall be placed or kept on the Condominium except in sanitary, covered containers of a type, size and style which are approved by the Board of Directors. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection, in accordance with the Association Rules. All rubbish, trash or garbage shall be removed from the Condominium and shall not be allowed to accumulate thereon. The Board of Directors shall have the right to adopt rules and regulations regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Unit or on any other portion of the Condominium and no trash, garbage, debris or other materials shall be burned by open fire or otherwise on any portion of the Condominium, except in properly constructed barbecue pits, grills or firepits approved by the Board of Directors.

4.9 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of Dwellings, Improvements or structures that are within the uses permitted by this Declaration, and except such machinery or equipment that the Association may require for the operation, maintenance, repair or replacement of the Common Elements.

4.10 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Unit, except that no more than a reasonable number of generally recognized house or yard pets ("Permitted Pets") may be kept on a Unit if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets shall be confined to the Unit Owner's Unit except that a Permitted Pet may be permitted to leave the Unit if the Permitted Pet is at all times kept in a carrier or on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Unit. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property without the prior written consent of the Board of Directors, and no outside dog runs shall be permitted on any Unit. No Member or resident shall feed or allow any domestic or wild animals or birds to feed outdoors, or shall take any action or inaction or place any object or structure on the Unit or Common Elements that would attract such animals or birds at such times and in such numbers, that such feeding creates an unreasonable disturbance, accumulation of droppings, or causes damage to any other Unit or the Common Elements. Upon the written

request of any Unit Owner or resident, the Board of Directors shall determine, in its sole and absolute discretion, whether, for the purposes of this Section (i) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise, (ii) a particular pet is a Permitted Pet, and (iii) the number of Permitted Pets kept on a Unit is reasonable. Any decision rendered by the Board of Directors shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Unit Owner, resident or other person who brings or permits a pet to be on the Common Elements or any Unit or street shall be responsible for immediately removing any feces deposited by said pet. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets.

4.11 Temporary Occupancy. No boat, truck, mobile home, trailer, camper, recreational vehicle, basement of any incomplete Dwelling, tent, shack, garage, barn or other structure, and no temporary Improvement of any kind shall be used at any time as a residence either temporarily or permanently. Temporary structures used during the construction of Dwellings or structures approved by the Board of Directors shall be permitted but must be removed promptly upon completion of the construction of the Dwelling or structure.

4.12 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Condominium so as to be Visible From Neighboring Property.

4.13 Mineral Exploration. No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

4.14 Diseases and Insects; Safe Condition. No Unit Owner shall permit any thing or condition to exist upon the Condominium that could induce, breed or harbor infectious plant diseases or noxious insects. Each Unit Owner shall perform such pest control activities as may be necessary to prevent insects, rodents and other pests from being present in the Unit. Each Unit Owner shall maintain and keep his Unit at all times in a safe, sound and sanitary condition.

4.15 Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4 ton carrying or cargo capacity, commercial vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium except for: (i) temporary construction trailers or facilities maintained during, and used exclusively in connection with, construction of any Improvement approved by the Board of Directors, and (ii) boats and vehicles parked in garages so long as such vehicles are in good operating condition and appearance and are not under repair. For purposes of this Section, a commercial vehicle is any vehicle that meets any one or more of the following criteria: more than an aggregate of one hundred forty-four (144) square inches of any type of signage, design or lettering for advertising; commercial utility racks or ladder racks located on the vehicle; or work equipment or a tool box stored on the vehicle that is visible from outside of the vehicle.

4.16 Motor Vehicles. Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No Unit Owner or other resident of a Unit may park any automobile, motorcycle, motorbike or other motor vehicle upon any part of the Condominium except in garages. Guests of a Unit Owner or other resident may park an automobile, motorcycle, motor bike or other motor vehicle not inoperable and not exceeding seven (7) feet in height and eighteen (18) feet in length owned or leased by such guest in a driveway allocated to such Unit as a Limited Common Element, provided that no vehicle shall be parked on any portion of a sidewalk or other pedestrian walkway and no vehicle shall be parked in any manner so as to block ingress and egress between a neighboring Unit and the adjacent street. For purposes of this Section, an inoperable vehicle is one that is not running, has one or more flat tire(s) for ten (10) or more days, is up on blocks, is not properly licensed, or is not currently registered.

**Parking on streets is prohibited.**

4.17 Towing of Vehicles. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by a Unit Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of Assessments or as permitted by law.

4.18 Garages. Garage doors shall be kept closed at all times except when it is necessary to open the garage door to allow a vehicle to enter or exit the garage or for the placement or removal of personal items or for cleaning purposes. Garages shall be used only for the parking of motor vehicles and no garage shall be used or converted to use for living or recreational purposes. Garages may be used for the incidental storage of equipment or materials so long as the storage of such equipment or materials does not prevent the garage from being available for the parking of the number of motor vehicles for which the garage was designed.

4.19 Signs. No sign of any kind shall be displayed so as to be Visible From Neighboring Property without the approval of the Association, except (i) such signs as may be required by legal proceedings or the prohibition of which is precluded by law; or (ii) such signs as may be required for traffic control and regulation of the Common Elements.

4.20 Violation of Law or Insurance. No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration. No Unit Owner shall permit anything to be done or kept in or upon a Unit that

will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any Unit Owner or the Association.

4.21 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is detrimental or an embarrassment to the Association, to any portion of the Condominium, or any Unit Owner or other resident of the Condominium. No loud music or other loud noises or vibrations originating from inside or outside a Dwelling shall be allowed if such music, noise or vibration disturbs neighboring Unit Owners, and no exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

4.22 Window Coverings. No reflective materials, including aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Dwelling without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Dwelling shall be constructed, maintained or installed without the prior written consent of the Board of Directors.

4.23 Mechanical Equipment. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling or other structure on a Unit so as to be Visible From Neighboring Property, and any such equipment installed on the ground shall be screened so as not to be Visible From Neighboring Property.

4.24 Basketball Goals and Backboards. No basketball goal, pole, backboard or other similar structure, whether portable or permanent, may be installed on any portion of the Condominium without the prior written approval of the Board of Directors.

4.25 Lighting. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Unit that in any manner will allow light to be directed or reflected unreasonably upon any other Unit or the Common Elements.

4.26 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Unit shall be further subdivided or separated into smaller units or parcels by any Unit Owner, no portion less than all of any such Unit shall be conveyed or transferred by any Unit Owner, and two or more Units shall not be combined into fewer Units than originally shown on the Plat without the prior written approval of the Board of Directors. If two or more Units are combined into fewer Units than originally shown on the Plat pursuant to the prior written approval of the Board of Directors and the approval of the appropriate governmental authority, the provisions of Article 6 and Article 7 of this Declaration shall apply to such Units as originally shown on the Plat, and no diminution of voting rights or decrease in Assessments shall be applicable to the Units so combined. No further covenants, conditions, restrictions or easements shall be Recorded by any Unit Owner, lessee, or other Person against any part of the Condominium without the provisions thereof having been first approved in writing by the Board of Directors. No application for rezoning, variances or use permits pertaining to any Unit shall be filed with any



governmental authority by any Person unless the application has been approved by the Board of Directors and the proposed use otherwise complies with this Declaration.

4.27 Drainage. No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Condominium, or any part thereof, or for any Unit as shown on the drainage plans on file with the City. No Person shall alter the grading of a Unit or alter the natural flow of water over and across a Unit without the prior written approval of the Board of Directors.

4.28 Natural Area Open Space. Any portion of the Condominium designated "NAOS" or "Natural Area Open Space" on the Plat or any other Recorded document shall be left undisturbed and shall be maintained by the Association in a natural state pursuant to the requirements of the City.

4.29 Leasing of Units.

4.29.1 Subject to the terms of this Section, an entire Unit may be leased to a lessee from time to time by a Unit Owner provided that each of the following conditions is satisfied:

(i) Only an entire Unit may be leased; no Unit Owner may lease less than an entire Unit.

(ii) The lease or rental agreement must be in writing.

(iii) The lease between a Unit Owner and a lessee shall contain provisions that (a) the lease or rental agreement is subject to this Declaration and other Condominium Documents, (b) the lessee has received and agrees to be bound by the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Condominium Documents, and (c) any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease.

(iv) Before commencement of the lease term or rental agreement, the Unit Owner shall provide the Association with the names of the lessees and each person who will reside in the Dwelling, the commencement and termination dates of the lease term or rental agreement and the address and telephone number of the Unit Owner.

4.29.2 Any Unit Owner that leases or rents such Unit Owner's Unit shall keep the Association informed at all times of the Unit Owner's address and telephone number. Any lease or rental agreement shall be subject to the Condominium Documents and any breach of the Condominium Documents shall constitute a default under the lease or rental agreement, regardless of whether it so provides in the lease or rental agreement. If any lessee breaches any restriction contained in the Condominium Documents, the Unit Owner, upon demand by the Association, immediately shall take such actions as may be necessary to correct the breach, including, if necessary, eviction of the lessee. Notwithstanding the foregoing, the Association

shall have all rights and remedies provided for under this Declaration and the Condominium Documents.

4.30 Solar Devices. Solar energy devices, including but not limited to, solar panels, solar tubes, solar hot water heaters, and electric generating devices, may only be placed, constructed or maintained on a Unit in compliance with the Rules and the Architectural Rules, except as must otherwise be permitted pursuant to applicable law.

4.31 Variances. The Board of Directors may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Board of Directors determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on a Unit Owner or resident or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (ii) the activity permitted under the variance will not have any substantial adverse effect on Unit Owners and residents and is consistent with the high quality of life intended for residents of the Condominium.

## **ARTICLE 5**

### **MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS**

#### **5.1 Duties of the Association**

5.1.1 The Association or its duly delegated representative shall be responsible for the following:

(i) Inspecting, maintaining, repairing and replacing all Common Elements, except for those portions of the Common Elements to be maintained by (a) the Master Association pursuant to the Master Declaration and any other Recorded instrument wherein the Master Association accepts responsibility for inspecting, maintaining, repairing and/or replacing certain portions of the Common Elements, (b) the Master Declarant pursuant to the Easement and Operating Agreement, and (c) the Unit Owners as set forth in Section 5.3 below. The cost of all such inspection, maintenance, repairs and replacements shall be Common Expenses and shall be paid for by the Association.

(ii) Repainting, as needed due to deterioration of the paint resulting from normal wear and tear, the exterior walls and all other exterior surfaces of the Dwellings that were originally painted by Declarant; provided, however, that it shall be the Unit Owner's responsibility to repaint the exterior walls and any other exterior surface of the Dwelling as a result of damage to or destruction of the Dwelling.

(iii) Repainting and re-stuccoing, as needed from time to time, the portions of all landscape and privacy walls located on the Unit that are Visible From Neighboring Property. The Association's responsibility for maintenance of such walls shall include only repainting and re-stuccoing as needed due to deterioration of the paint and stucco resulting from normal wear and tear. The Association shall have no responsibility for any structural repair and maintenance that would require rebuilding all or a portion of any such wall, including any portion of the wall constructed with wrought iron, nor shall the Association have

any responsibility to repaint or re-stucco any such wall that has been repaired or rebuilt by a Unit Owner. If a fence or wall or portion thereof is wrought iron, the Association shall be responsible for the repainting of all sides of the wrought iron surface, but each Owner shall pay to the Association one-half the cost of such repainting for the portion of the fence that is not Visible From Neighboring Property and such cost shall be assessed against the Unit Owner pursuant to Subsection 7.2.6 of this Declaration. Each Unit Owner shall be responsible for all other maintenance of any wall on the Unit, including the surface of any wall on the Unit that faces the Dwelling and is not Visible From Neighboring Property, all structural repair and maintenance of any wall on the Unit and the repainting and re-stuccoing of any wall on the Unit as a result of the wall being repaired or rebuilt by the Unit Owner.

(iv) Maintaining, watering, trimming, weeding, fertilizing and otherwise caring for landscaping, including all irrigation lines and facilities, lying within the front yard and any unenclosed side yard of each Unit and Visible From Neighboring Property, all with such frequency and in such manner as may be determined by the Board of Directors from time to time in its discretion; provided, that the Association shall not be required to perform any maintenance of flowers, plants or other landscaping planted or installed behind any courtyard wall or as otherwise planted or installed by a Unit Owner or other resident of the Unit. No flowers, plants or other landscaping shall be planted or installed by a Unit Owner or resident in an area Visible From Neighboring Property without the prior written consent of the Board of Directors. No Unit Owner, resident or other person shall remove or modify any flowers, plants or other landscaping or other Improvements in the portion of the Unit that is Visible From Neighboring Property without the prior written approval of the Board.

(v) Maintaining, repairing, replacing and otherwise keeping in good order and repair all water and sewer mains and pipes lying within the Common Elements up to the property line of a Unit, except for any portion of such mains and pipes for which a public or private utility company has the responsibility to maintain.

5.1.2 The Association may, if deemed appropriate by the Board of Directors, provide for termite or other pest control, but if the Association does not do so, or limits such termite or pest control treatment to Common Elements, each Owner will be responsible for performing (or causing to be performed) termite and pest control service to keep the Unit free from termite and pest infestation.

5.2 Duty to Inspect. It shall be the duty of the Board of Directors to have the Common Elements (except for those portions of the Common Elements to be maintained by (i) the Master Association pursuant to the Master Declaration, (ii) the Master Declarant pursuant to the Easement and Operating Agreement, and (iii) the Unit Owners as set forth in Section 5.3 below) and those portions of the Units described in Subsections 5.1.1(ii), (iii) and (iv) above (collectively, the “Areas of Association Responsibility”) inspected as deemed reasonably necessary by the Board of Directors.

5.2.1 Purpose of Inspections. The purpose of the inspections shall be to (i) determine whether the Areas of Association Responsibility are being maintained adequately in accordance with the Maintenance Standard; (ii) identify the condition of the Areas of

Association Responsibility, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair; and (iii) recommend preventive actions that may be taken to reduce potential maintenance costs to be incurred in the future.

5.2.2 Experts and Consultants. The Board of Directors may employ such experts and consultants as are necessary or desirable to perform such inspections. Where mechanical and/or structural knowledge is necessary for adequate inspection of such Improvements, the Board of Directors shall retain Persons with appropriate credentials. Drainage systems and devices shall be inspected by individuals qualified to do so in their respective industries and in accordance with the manufacturers' recommendations.

5.3 Duties of Unit Owners. Each Unit Owner shall maintain in good order and repair and replace, at his own expense, all portions of his Unit not maintained by the Association pursuant to Section 5.1 of this Declaration. In addition, Unit Owners shall be responsible for the maintenance and repair of the Limited Common Elements allocated to such Unit Owners as set forth in Subsection 2.8.1. The following provisions shall apply to the use and maintenance of Limited Common Elements:

5.3.1 The prior written consent of the Board of Directors shall be required for the installation of Improvements within a Limited Common Element.

5.3.2 The Unit Owners of Units sharing one Limited Common Element each shall have the right to use the common driveway within the Limited Common Element; provided, however, that the use of the common driveway by one Unit Owner shall not interfere with the use and enjoyment of the common driveway by the other Unit Owner.

5.3.3 The Unit Owners of Units served by a common driveway shall each have the right to perform any necessary maintenance and repair on or replacement of the common driveway and the cost of the maintenance, repair or replacement shall be shared equally by such Unit Owners.

5.3.4 If a common driveway is damaged or destroyed through the act of a Unit Owner, his agents, employees or contractors, it shall be the obligation of such Unit Owner to rebuild and repair the common driveway without cost to the other Unit Owner.

5.3.5 If a common driveway is damaged or destroyed by some cause other than the act of one of the adjoining Unit Owners, his agents, lessees, licensees, guests or the residents of the Unit (including ordinary wear and tear and deterioration from lapse of time), then the Unit Owners served by the common driveway, at their joint and equal expense, shall repair or replace the driveway.

5.3.6 The right of any Unit Owner to contribution from any other Unit Owner under this Section shall be appurtenant to such Unit Owner's Unit and shall pass to such Unit Owner's successors in title.

5.3.7 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Unit Owner proposing to modify, make additions to or rebuild a common driveway shall first obtain the written consent of the other Unit Owner being served by the common driveway.

5.3.8 The Unit Owners of Units sharing one Limited Common Element each shall maintain in good order and repair and replace, at his or her own expense, any other Improvements within such Limited Common Element that serve only one Unit (e.g., patios and entryways), except for any portion thereof for which the Association has such responsibility pursuant to Section 5.1 of this Declaration.

5.4 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association for any damage to the Common Elements or the Improvements thereon that results from the negligence or willful misconduct of the Unit Owner or its guests, invitees or licensees. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner, its guests, invitees or licensees shall be paid by the Unit Owner, upon demand, to the Association. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4 of this Declaration.

5.5 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in accordance with the Maintenance Standard the Unit or any Limited Common Element for which the Unit Owner has an obligation to maintain under this Declaration or any other Recorded document and the required maintenance, repair or replacement is not performed within the time frame imposed by the Board of Directors after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4 of this Declaration.

## **ARTICLE 6**

### **THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP**

6.1 Rights, Powers and Duties of the Association. The Association has been organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance Association expenses by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors.

6.2 Directors and Officers. The Unit Owners shall elect the Board of Directors, which must consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be Recorded.

6.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. An Owner of a Unit shall automatically, upon becoming the Unit Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as such Unit Owner's ownership ceases for any reason, at which time, such Unit Owner's membership in the Association shall automatically cease.

6.5 Limitation of Liability.

6.5.1 Personal Liability. No member of the Board of Directors, member of any committee of the Association, any officer of the Association or any manager or other employee of the Association shall be personally liable to any Member, or to any other Person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5.2 Director Liability. In accordance with the provisions of the Nonprofit Corporation Act (set forth at A.R.S. § 10-3101 et seq., as may be amended from time to time), each member of the Board of Directors shall be immune from civil liability and shall not be subject to suit indirectly or by way of contribution for any act or omission resulting in damage or injury if such member of the Board was acting in good faith and within the scope of his or her official capacity (which is any decision, act, or event undertaken by the Association in furtherance of the purpose or purposes for which it is organized) unless such damage or injury was caused by willful and wanton or grossly negligent conduct of the Board member. This provision intends to give all Board members the full extent of immunity available under the Nonprofit Corporation Act.

6.6 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Condominium Documents and every other right or privilege

reasonably to be implied from the existence of any right or privilege given to the Association by the Condominium Documents or reasonably necessary to effectuate any such right or privilege.

6.7 Voting Rights. Subject to Section 6.8 below, each Unit Owner shall be entitled to cast the number of votes for each Unit owned by such Unit Owner in accordance with the allocation set forth in Section 2.7 of this Declaration on any Association matter that is put to a vote of the membership in accordance with this Declaration, the Articles and/or Bylaws.

6.8 Voting Procedures. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. The votes for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit Owner was acting with the authority and consent of all other Unit Owners of the same Unit unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit and there is a conflict among the votes cast, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit Owner's Unit, and then only to the transferee of ownership to the Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of Record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit Owner thereof. Each Person who purchases a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit Owner of a Unit.

6.10 Suspension of Voting Rights. If any Unit Owner fails to pay any Assessments or other amounts due to the Association under the Condominium Documents within fifteen (15) days after such payment is due, the Unit Owner's right to vote shall automatically be suspended until such time as all payments, including interest and attorneys' fees, are brought current. In addition, if any Unit Owner violates any other provision of the Condominium Documents, the Board of Directors shall have the right to suspend such Unit Owner's right to vote for an initial reasonable time period; however, such suspension may remain in effect until any other infractions or violations of the Condominium Documents are corrected.

6.11 Conveyance or Encumbrance of Common Elements. The Common Elements shall not be conveyed or subjected to a mortgage, deed of trust or security interest without the prior written consent or affirmative vote of Unit Owners representing at least eighty percent (80%) of the votes allocated to Unit Owners, as provided in the Condominium Act. In addition, any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) of an

individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated also is transferred.

## **ARTICLE 7 ASSESSMENTS**

### **7.1     Preparation of Budget.**

7.1.1     At least sixty (60) days before the beginning of each fiscal year of the Association, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses, including: (i) the cost of inspection, maintenance, management, operation, repair and replacement of the Common Elements and all Improvements thereon, except for any portion thereof to be maintained by the Master Association or the Master Declarant as set forth in the Master Declaration, the Easement and Operating Agreement and this Declaration; (ii) the cost of inspection, maintenance, management, operation, repair and replacement of those portions of the Units for which the Association is obligated to maintain pursuant to Section 5.1 of this Declaration; (iii) the cost of insurance premiums for fire, liability, and directors, officers and agents liability and fidelity, and any other insurance that may be required for the Association or the Condominium or that the Board of Directors determines advisable to obtain; (iv) the cost of compensation, wages, materials, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium, including landscape renovation and maintenance; (v) the costs of rendering to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; (vi) such other funds in addition to the Reserve Contribution as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (vii) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Condominium, for the common benefit of the Unit Owners. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsections 7.2.4, 7.2.5 and 7.2.6 of this Declaration.

7.1.2     Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit in accordance with Section 7.2 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his or her allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

7.1.3     The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget or amended budget by the Unit Owners shall be required.



## 7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2.4, 7.2.5 and 7.2.6 of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses shall be assessed against all of the Units in accordance with Subsection 7.2.1 of this Declaration.

7.2.4 If any Common Expense is caused by the misconduct of a Unit Owner, his agents, lessees, licensees, guests or other residents of the Unit, the Association shall assess that Common Expense exclusively against such Unit.

7.2.5 Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered in proportion to their Common Expense Liabilities.

7.2.6 Any Common Expense or portion of a Common Expense benefitting fewer than all of the Units, including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, if any, shall be assessed and allocated against the Units benefitted, in proportion to each Unit's benefit as determined by the Board.

7.2.7 All Assessments, monetary penalties and other fees and charges levied against a Unit shall be in addition to any assessments levied by the Master Association pursuant to the Master Declaration and shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against his Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

7.3 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special Assessment for any lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 9.1 of this Declaration as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Unit Owners representing two thirds (2/3) of the votes cast by Unit Owners who are voting in person or by absentee ballot at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

7.4 Effect of Nonpayment of Assessments; Remedies of the Association.

7.4.1 Any Assessment, or any installment of an Assessment, that is not paid within five (5) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors.

7.4.2 All Assessments and charges for late payment of Assessments and for reasonable attorneys' fees and costs incurred with respect to Assessments (collectively, the "Assessment Lien Charges") imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Condominium Act. The Recording of this Declaration constitutes Record notice and perfection of the Assessment Lien, and no further Recordation of any claim of lien shall be required. Although not required in order to perfect the Assessment Lien, the Association shall have the right, but not the obligation, to Record a notice setting forth the amount of any delinquent Assessment Lien Charges imposed or levied against a Unit or the Unit Owner that are secured by the Assessment Lien.

7.4.3 The Association shall have the right, at its option, to enforce collection of any delinquent Assessment Lien Charges owed to the Association in any manner allowed by law including, but not limited to: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the right to take either or both of the foregoing actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy). The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.5 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, including the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessment Lien Charges against the Unit that became payable prior to such sale or transfer. Any Assessment Lien Charges that accrue prior to such sale or transfer shall remain the obligation of

the defaulting Unit Owner. Any delinquent Assessment Lien Charges that are extinguished pursuant to this Section may be reallocated and assessed to all Units as a Common Expense.

7.6 Monetary Penalties; Other Fees and Charges. In accordance with any procedures set forth in the Bylaws, the Board of Directors shall have the right to levy reasonable monetary penalties against a Unit Owner for violations of the Condominium Documents by such Unit Owner, any resident of a Unit, or any guests or invitees of such Owner or resident of a Unit. In addition to the Assessment Lien described in Subsection 7.4.2, the Association also shall have a lien on each Unit for all monetary penalties and fees, attorneys' fees, court costs, charges, late charges and interest charged with respect to such monetary penalties and fees (the "Penalty Charges"), after the entry of a judgment in a civil suit for such Penalty Charges from a court of competent jurisdiction and the Recording of such judgment as otherwise provided by law (the "Penalty Lien"). The Penalty Lien may not be foreclosed and is effective only on conveyance of any interest in the Unit except as otherwise may be permitted by law.

7.7 Exemption of Unit Owner. No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and nonuse of any of the Common Elements and Limited Common Elements by the abandonment of his Unit.

7.8 Certificate of Payment. The Association on written request shall furnish to a lienholder, escrow agent, Unit Owner or Person designated by a Unit Owner a statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within ten (10) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.9 No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

7.10 Working Capital Fee.

7.10.1 To provide the Association with adequate operating funds, each Purchaser of a Unit shall pay to the Association, immediately upon becoming the Unit Owner of the Unit, a sum equal to two monthly installments of the Common Expense Assessment for the Unit (the "Working Capital Fee"). Such payment shall become due at the close of escrow or immediately upon the transfer of title to the Unit, whichever occurs first. Any Working Capital Fee not so paid shall become a part of the Assessment Lien on the Unit and collectible in the same manner as Assessments. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses related to the Common Elements. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.10.2 No Working Capital Fee shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board of Directors determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Fee in which event a Working Capital Fee shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustees deed following a trustees sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a Purchaser's interest under a Recorded contract for the conveyance of real property or a deed in lieu of foreclosure subject to A.R.S. § 33-741, et seq.

7.11 Reserves. Each budget adopted by the Board of Directors shall include reasonable amounts as determined by the Board of Directors to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Elements. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account(s) (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected. Withdrawal of funds from the Association's reserve account shall require the signatures of either (i) two (2) members of the Board of Directors, or (ii) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall periodically obtain updates to the initial reserve study to include (a) identification of the major components of the Common Elements that the Association is obligated to repair, replace, restore or maintain that, as of the date of the study, have a remaining useful life of less than thirty (30) years, (b) identification of the probable remaining useful life of the identified major components as of the date of the study, (c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified major components during and at the end of their useful life, and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Provided that the Board of Directors acts in good faith in determining the amount to be collected as reserves, no director or officer of the Association shall be liable to the Association or any Member if the amount collected as reserves proves to be inadequate to pay for all required periodic maintenance, repair and replacement that was intended to be funded from reserves.

7.12 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be retained by the Association for payment of Common Expenses or be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments.

7.13 Transfer Fee. Each Person acquiring a Unit shall pay to the Association immediately upon becoming the Unit Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors in accordance with Arizona law.

## **ARTICLE 8 INSURANCE**

### 8.1 Scope of Coverage.

8.1.1 The Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Elements and all Improvements thereon issued under a form which provides "All Risk of Direct Physical Loss" in an amount equal to the maximum insurable replacement value of the Common Elements, as determined by the Board of Directors; provided, however that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation.

(ii) Broad form commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than \$2,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or relating to the use, ownership or maintenance of the Areas of Association Responsibility as defined in Section 5.2 of this Declaration. Such policy shall include a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner.

(iii) Workers' compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

(iv) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(v) Such other insurance (including employment practices liability insurance) as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners.

8.1.2 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association;

(ii) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners or members of their household;

(iii) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy;

(iv) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance that may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust;

(v) A “severability of interest” endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners;

(vi) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer);

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial change in coverage or cancellation of the policy;

(viii) Any insurance trust agreement will be recognized by the insurer;  
and

(ix) “Agreed Amount” and “Inflation Guard” endorsements.

8.1.3 If the Condominium is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a “blanket policy” of flood insurance on the Common Elements of the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the Improvements and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

8.1.4 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association’s policy shall provide primary coverage.

8.1.5 If the insurance described in this Subsection 8.1.1(i) and (ii) is not reasonably available, the Association promptly shall cause notice of the fact to be hand delivered or sent prepaid by United States mail to all Unit Owners.

## 8.2 Fidelity Insurance.

8.2.1 The Association shall maintain blanket fidelity insurance coverage for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association including officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity insurance maintained by the Association shall be based upon the best business judgment of the Board of Directors, and shall not be less than the greater of the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of the policy, or the sum equal to three months aggregate Common Expense Assessments on all Units plus reserve funds. Fidelity insurance obtained by the Association must also meet the following requirements:

- (i) The fidelity insurance policy shall name the Association as the insured;
- (ii) The fidelity insurance policy shall contain waivers by the issuer of the policy of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees” or similar terms or expressions;
- (iii) The fidelity insurance policy shall provide that it may not be canceled or substantially modified (including cancellation from nonpayment of premium) without at least thirty (30) days prior written notice to the Association.

8.2.2 The Association shall require any management agent of the Association to maintain its own fidelity insurance policy in an amount equal to or greater than the amount of the fidelity insurance policy to be maintained by the Association pursuant to this Declaration. The fidelity insurance policy maintained by the management agent shall cover funds of the Association to which the management agent has access as approved by the Association and shall name the Association as an insured party.

8.3 Payment of Premiums and Deductibles. Premiums for all insurance obtained by the Association pursuant to Section 8.1 and Subsection 8.2.1 shall be Common Expenses and shall be paid for by the Association. The deductibles for insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association except that the Association may assess fewer than all of the Unit Owners for the cost of the deductible as provided in Sections 7.2.4 and 7.2.6 herein. If an Owner is required to pay the amount of the deductible to the Association to perform any repair or reconstruction work, said amount shall be paid within sixty (60) days of its due date, as established by the Association. Any unpaid deductible shall be collectible in the same manner as a delinquent Assessment.

8.4 Insurance Review. The Board of Directors, relying on advice and information provided by the Association’s insurance broker and/or agent, shall periodically determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Condominium in light of increased construction costs, inflation, practice in the area of which the Condominium is located or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to

protect the interest of the Unit Owners and of the Association. If the Board of Directors determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

#### 8.5 Insurance Required of Unit Owners.

8.5.1 Upon acquiring a Unit, each Unit Owner shall obtain and maintain during the ownership of the Unit one or more insurance policies insuring against (i) all risk of direct physical loss of all Improvements constructed upon the Unit, including the Dwelling, in an amount not less than one hundred percent (100%) of the current replacement cost of the insured property (as it may change from time to time), exclusive of land, excavations, foundations and other items normally excluded from a property policy, and (ii) liability insurance in an amount not less than \$1,000,000 per occurrence (or any other amount as the Board may determine from time to time to be reasonable), which shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or relating to the use, ownership or maintenance of the Unit. The Association from time to time may request evidence of the insurance required pursuant to this Section 8.5, but the failure to request such evidence shall not diminish in any way the requirement to obtain the insurance as set forth herein.

8.5.2 Each Unit Owner has read and understands this Section 8.5, which sets forth the requirement of each Unit Owner to obtain and maintain insurance as set forth above and agrees to comply with such provisions, each such Unit Owner acknowledging that such insurance is necessary to protect the value, desirability and attractiveness of the Condominium. Each Unit Owner further acknowledges and agrees that the Association is not obligated to, and will not, obtain or pay for any insurance (property, liability or otherwise) for any portion of the Units, except for the liability insurance described in Subsection 8.1.1 covering the acts of the Association and its directors, officers, agents, employees and independent contractors in the performance of its obligations under this Declaration.

8.5.3 Each Unit Owner, on behalf of its family members, invitees, lessees and licensees, hereby releases the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including strict liability) arising out of or relating to any nuisance, inconvenience, disturbance, injury to persons (including death) or damage resulting from the failure of any Unit Owner to comply with this Section 8.5.

8.6 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. § 33-1253.

8.7 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or First Mortgagee. The insurer issuing the policy shall not



cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association.

## **ARTICLE 9 DESTRUCTION OF IMPROVEMENTS**

9.1 Automatic Reconstruction. Any portion of the Common Elements that is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty percent (80%) of the Unit Owners, including every Unit Owner of a Unit allocated a Limited Common Element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3 of this Declaration and a vote of the Unit Owners shall not be necessary for such Special Assessment.

9.2 Determination Not to Reconstruct Without Termination. If eighty percent (80%) of the Unit Owners (including every Unit Owner of a Unit allocated a Limited Common Element that will not be rebuilt) vote not to rebuild, and the Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Unit Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to Common Element interests of all the Units.

9.3 Distribution of Insurance Proceeds in the Event of Termination of the Condominium. Notwithstanding any provisions of this Article 9 to the contrary, the distribution of insurance proceeds resulting from the damage or destruction of all or any part of the Common Elements shall be distributed as provided in the Condominium Act in the event of a termination of the Condominium.

9.4 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed portion of the Common Elements or Limited Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such portion of the Common Elements or Limited Common Elements. Any settlement made by the Association in good faith shall be binding upon all Unit Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2 of this Declaration, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements or Limited Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds

after the damaged or destroyed Common Elements or Limited Common Elements have been completely repaired or restored or the Condominium is terminated.

9.5 Destruction of Units. Installation of Improvements to, and repair of any damage to, a Unit (including a Dwelling) shall be made by and at the individual expense of the Unit Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

9.6 Priority. Nothing contained in this Article shall entitle a Unit Owner to priority over any lender under a lien encumbering his Unit as to any portion of insurance proceeds allocated to such Unit.

## **ARTICLE 10 EMINENT DOMAIN**

10.1 Total Taking of a Unit. If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. Upon such a taking, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall automatically be reallocated to the remaining Units in proportion to their respective allocated interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and Record an amendment to the Declaration in compliance with the Condominium Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

10.2 Partial Taking of a Unit. Except as provided in Section 10.1, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in the value of his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. On acquisition, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be reduced in proportion to the reduction in size of the Unit and the portion of the allocated interests divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced interest.

10.3 Taking of Common Elements. If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken shall be paid to the Association for the benefit of the Unit Owners, and any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Unit Owners of the Units to which that Limited Common Element was allocated at the time of the acquisition.

10.4 Taking of Entire Condominium. In the event the Condominium in its entirety is acquired by eminent domain, the Condominium is terminated and the provisions of A.R.S. § 33-1228 apply.

10.5 Priority and Power of Attorney. Nothing contained in this Article shall entitle a Unit Owner to priority over any First Mortgagee under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Elements, or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns or a Unit Owner.

## **ARTICLE 11 GENERAL PROVISIONS**

11.1 Enforcement. The Association, or any Unit Owner, shall have the right (but not the obligation) to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that because of the strength of the Unit Owner's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. The Master Association shall have no duty or obligation to enforce this Declaration.

11.1.1 Notice of Violation. Notwithstanding the generality of the foregoing, the Association shall have the right to Record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps that must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was Recorded, the Recording data of the Notice of Violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

11.2 Costs of Enforcement. If the Association takes any action to enforce the provisions of the Condominium Documents, whether or not a lawsuit is filed, the Association shall be entitled to recover from the Owner against whom enforcement is sought all costs of enforcement, including but not limited to attorney's fees incurred by the Association. Such amounts shall be collectible in the same manner as Assessments. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorney's fees, court costs, costs of investigation and other related expenses incurred therewith.

11.3 Severability. Invalidation of any one of the terms, covenants, conditions or restrictions shall in no way affect any other provisions herein, which shall remain in full force and effect. However, if any term, covenant, condition or restriction is deemed unenforceable to its full extent, then such term, covenant, condition or restriction shall be enforced to the maximum extent permitted by law and may be modified by the trier of law to enable it to be enforced to the fullest extent permitted at law.

11.4 Duration and Termination. The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Condominium in perpetuity unless the Condominium is terminated in the manner provided for in the Condominium Act.

11.5 Amendment.

11.5.1 Subject to the provisions of Subsection 11.20.8 of this Declaration, and except in cases of amendments that may be executed by the Association under A.R.S. §§ 33-1206 or 33-1216(D), or by certain Unit Owners under A.R.S. §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B), the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the written consent of the Master Association as required by Section 18 of the Master Declaration.

11.5.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

11.5.3 Any amendment adopted by the Unit Owners pursuant to Subsection 11.5.1 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section.

11.6 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

11.7 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail,

postage prepaid, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one Person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his or her correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

11.8 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. The Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

11.9 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

11.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Unit Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Unit Owner or Member arising out of or relating to such ownership or membership and the covenants and obligations incident thereto.

11.12 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws or the Rules, the provisions of this Declaration shall prevail.

11.13 Joint and Several Liability. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Condominium Documents shall be joint and several.

11.14 Guests and Tenants. Each Unit Owner shall be responsible for compliance by such Unit Owner's guests, agents, tenants, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

11.15 Attorneys' Fees in Administrative Actions. In the event the Association incurs legal expenses and costs, including, but not limited to, attorney's fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to, proceedings before an Administrative Law Judge, the Association shall be entitled to recover its attorney's fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party.

11.16 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

11.17 Master Association. The Condominium is part of a master planned community known as The Boulders and is subject to the terms and conditions of the Master Governing Documents. The Unit Owners and residents of Units subject to this Declaration must comply with the Master Governing Documents, as well as comply with all covenants, conditions and restrictions set forth in this Declaration. Each Unit Owner and the Association acknowledge and agree that the covenants, conditions and restrictions set forth in this Declaration are subordinate and subject to all covenants, conditions and restrictions set forth in the Master Governing Documents. All assessments and amounts payable to the Master Association pursuant to the Master Declaration shall be in addition to any Assessments or other amounts due to the Association pursuant to this Declaration. All Assessments or other amounts due to the Association shall be subordinate to the assessments and amounts payable to the Master Association pursuant to the Master Declaration. Each Unit Owner and the Association acknowledge and agree that neither the Master Association nor the Master Declarant shall be responsible for the maintenance, repair or replacement of the Common Elements, except as specifically set forth in the Master Declaration and the Easement and Operating Agreement, as they may be amended from time to time, or as specifically set forth in any other Recorded document executed by the Master Association or the Master Declarant, as applicable.

11.18 Views Not Guaranteed. Although certain Units in the Condominium at any point in time may have particular views, no express or implied easements exist for views or for the passage of light and air to any Unit. Neither Declarant nor Association make any representation or warranty whatsoever, express or implied, concerning the view that any Unit will have whether at the date this Declaration is Recorded or thereafter. Further, the payment of any premium for any Unit does not constitute a guarantee of any view the Unit may have now or in the future. Any view that exists at any point in time for a Unit may be impaired or obstructed by further construction within the Condominium, including by construction of Improvements (including landscaping) by the Association, construction by third parties and by the natural growth of landscaping. No third party, including any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Unit or any view of a Unit from any other property.

11.19 Disclaimers Regarding the Boulders Resort, the Boulders Club and Golf Courses.

11.19.1 Resort Use and Access. A luxury resort hotel, dining facilities and spa, and related improvements, services and facilities, known as the Boulders Resort & Golden Door Spa (all, collectively, the "Resort") is or may be shown in the master plan of the Master Community, but the Resort is NOT A PART of the Master Association. Neither ownership of property within the Condominium nor membership in the Association or the Master Association will entitle any Unit Owner or resident to any use or ownership interest in the Resort or its related services and facilities except as set forth in this Subsection 11.19.1. Unit Owners shall have access (subject to payment of the applicable charges and fees) to all Resort amenities that are available and being offered to guests at the Resort as determined by the owner of the Resort, in its sole discretion from time to time, in accordance with the then current form of services agreement. Charges for use of such amenities shall be at the then current and customary rates charged to guests at the Resort and may also be at "packaged" rates for groups of amenities as determined by the owner of the Resort, in its sole discretion from time to time. Further, there is no assurance that the Resort always will be owned by its present owner or always will be used as a resort. In the future, it is possible that the Resort may be conveyed to other owner(s), and its use may be changed to a use other than a resort.

11.19.2 The Boulders Club. Two 18 hole golf courses, a driving range, putting green and chipping practice area, tennis courts, golf pro shop, tennis pro shop, fitness center, swimming pool facilities, men's and ladies' locker rooms, food and beverage facilities, including banquet facilities, a lounge, and related improvements and facilities, known as the Boulders Club (all, collectively, the "Boulders Club") is or may be shown in the master plan of the Master Community, but the Boulders Club is NOT A PART of the Master Association property or the Condominium. Neither ownership of property within the Condominium nor membership in the Association or the Master Association will entitle any Unit Owner or resident to any ownership interest in the Boulders Club or its related facilities. No Unit Owner will have any right to a membership in the Boulders Club by virtue of his ownership of a unit in the Condominium; provided, however, that the right to use any such facility through purchase or payment of membership or user fees or other charges shall be available to all Unit Owners on at least the same basis as is available to any other member of the public, as set forth in Master Declaration, and as set forth in that certain Amended and Restated Casitas and Villas Projects Agreement

dated December 31, 2003, by and among Master Declarant, Watt Solus, LLC, a Delaware limited liability company, and the Master Association (the "Casitas and Villas Projects Agreement"), subject to the provisions of the "Membership Agreement," as defined in the Casitas and Villas Projects Agreement, and any and all other documents relating thereto. Further, there is no assurance that the Boulders Club always will be owned by its present owner or always will be used as a private club. In the future, it is possible that the Boulders Club may be conveyed to other owner(s), and its use may be changed to a use other than a private club.

11.19.3 Golf Course. Two 18 hole golf courses are located adjacent to or in the vicinity of the Condominium. Certain nuisance factors associated with golf course play and maintenance may be present. Maintenance activities on the golf courses will begin early in the morning and extend late into the evening and often may require the use of chemicals and pesticides. During certain periods of the year, the golf courses will be heavily fertilized. The golf courses may be irrigated with effluent water. Golf balls are not easily controlled and accordingly may enter a unit and strike persons, walls, roofs, windows, landscaping and other personal property. Neither the Declarant Parties, the Master Declarant, the Master Association, the Association, the Boulders Club, any owner or operator of the golf courses nor any affiliate of any of the foregoing will be liable for personal injury or property damage directly or indirectly caused by matters relating to the existence, maintenance, operation and use of the golf courses. Each Unit Owner (for such Unit Owner and its residents, guests and invitees) (i) acknowledges and agrees that he has received, read and understands the terms and conditions set forth in the Golf Course Easement Agreement, and (ii) waives, releases and covenants never to prosecute any action or suit, in law or equity, or any claim or demand against the Boulders Club, the Master Declarant, the Declarant Parties, the Master Association, the Association, the golf course owner and/or operator, and their respective successors and assigns and their respective affiliates, directors, officers, employees and agents, for any liability (including strict liability), loss, damage, costs, fees or expenses whatsoever for injury to or death of any person whomsoever or loss or destruction of or damage (including reduction in value) to any property whatsoever arising out of or relating to the use, maintenance or operation of the golf course, including any such liabilities resulting from odors.

11.20 Dispute Notification and Resolution Procedure. All actions or claims (i) by the Association against any one or more of the Declarant Parties, (ii) by any Unit Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Unit Owner(s) against any one or more of the Declarant Parties, arising out of or relating to the Condominium, including the Declaration or any other Condominium Documents, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Dwellings) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this Section 11.20. Declarant and each Unit Owner acknowledge that the provisions set forth in this Section 11.20 shall be binding upon current and future Unit Owners of the Condominium and upon the Association, whether acting for itself or on behalf of any Unit Owner(s). Nothing in this Declaration is intended to limit,



expand or otherwise modify the terms of any limited warranty provided by Declarant to Unit Owners pursuant to a purchase agreement.

11.20.1 Notice. Any Person (including the Association) with a Dispute claim shall notify the applicable Declarant Party (the “Notified Declarant Party”) in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the “Claim Notice”).

11.20.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Notified Declarant Party and the claimant shall meet at a mutually acceptable place within the Condominium to discuss the claim. At such meeting or at such other mutually agreeable time, Notified Declarant Party and the Notified Declarant Party’s representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by the Notified Declarant Party (provided the Notified Declarant Party shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Subsection 11.20.2. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Notified Declarant Party elects to take any corrective action, the Notified Declarant Party and the Notified Declarant Party’s representatives and agents shall be provided full access to the Condominium and the property that is the subject of the claim to take and complete corrective action.

11.20.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Subsection 11.20.2 shall be construed to impose any obligation on the Notified Declarant Party to inspect, test, repair or replace any item of the Condominium for which the Notified Declarant Party is not otherwise obligated under applicable law or any limited warranty provided by Declarant to a Unit Owner in connection with the sale of a Unit and/or the Improvements constructed thereon. The right of the Notified Declarant Party to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in Recordable form, executed and Recorded by the Notified Declarant Party.

11.20.4 Mediation. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Subsection 11.20.2 above within ninety (90) days after delivery of the Claim Notice, the matter shall be submitted to mediation pursuant to the Construction Industry mediation Rules of the American Arbitration Association (except as such procedures are modified by the provisions of this Subsection 11.20.4) or such other mediation service selected by the Notified Declarant Party. The Person who delivered the Claim Notice shall have until one hundred twenty (120) days after the date of delivery of the Claim Notice to submit the Dispute to mediation. If the Person who delivered the Claim Notice fails to timely submit the Dispute to mediation, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the

prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Notified Declarant Party or any Declarant Party without complying with the procedures described in this Subsection 11.20.4.

(i) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Condominium is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute, consistent with the Construction Industry Mediation Rules of the American Arbitration Association. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Condominium designated by a Notified Declarant Party may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

11.20.5 Arbitration. Should mediation pursuant to Subsection 11.20.4, above not be successful in resolving any Dispute, then the Person who delivered the Claim Notice shall have ninety (90) days after the date of termination of the mediation to submit the Dispute to binding arbitration. If timely submitted, such claim or dispute shall be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 11.20.5. If the Person who delivered the Claim Notice fails to timely submit the Claim to arbitration within the ninety (90) day period, then the claim of the Person who delivered the Claim Notice shall be deemed waived and abandoned and all applicable Declarant Parties shall be relieved and released from any and all liability relating to the Dispute. A Person with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No Person may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. All Declarant Parties and any Person(s) submitting a Claim Notice, together with any additional Persons who agree to be bound by this Section 11.20 such as contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any Improvement upon or benefiting the Condominium (collectively, the "Bound Parties"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Subsection 11.20.5, and waive the right to have the Dispute resolved by a court, including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Subsection 11.20.5, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Condominium is located.

(ii) Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Condominium. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including destructive or invasive testing; and

(vi) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 11.20.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law, including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) Arbitration Award. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after conclusion of the arbitration hearing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. § 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held, or as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

#### 11.20.6 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 11.20 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 11.20. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND WAIVES ALSO THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 11.20 THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

11.20.7 Statutes of Limitation or Repose. Nothing in this Section 11.20 shall be considered to toll, stay, reduce or extend any applicable statute of limitation or repose.

11.20.8 Required Consent of Declarant to Modify. Neither this Section 11.20 nor Section 11.21 below may be amended except in accordance with Subsection 11.5.1 of this Declaration and with the express written consent of the Declarant.

11.21 Required Consent of Unit Owners for Legal Action. Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Section 11.20) against any one or more of the Declarant Parties, arising out of or relating to the Condominium, including the Declaration or any other Condominium Documents, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including Dwellings) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements, shall have first been approved by Unit Owners representing seventy-five percent (75%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

11.21.1 Notice of Unit Owners.

(i) Prior to obtaining the consent of the Unit Owners in accordance with Section 11.21, the Association must provide written notice to all Unit Owners which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board of Directors (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds that will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Declarant, and (9) an affirmative statement from the Board of Directors that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from Declarant (or any other Person) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

11.21.2 Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Unit Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 11.21.1.

### CERTIFICATION BY ASSOCIATION

The President of the Association hereby certifies that the provisions contained within this Amended and Restated Declaration have been approved by the required percentage of the Owners.

DATED this 21<sup>ST</sup> day of April, 2014.

The Boulders Casitas Condominium Association,  
an Arizona non-profit corporation

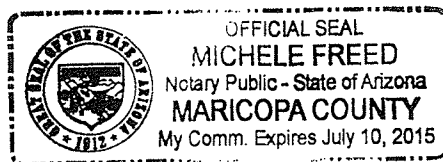
By: Judette N. Jones  
Its: President

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

On this 21 day of April, 2014, before me personally appeared Judette N. Jones, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

Michele Freed  
Notary Public

Notary Seal:



### CONSENT OF MASTER ASSOCIATION

Pursuant to Section 14.1 of that certain the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Owners Association of Boulders Scottsdale Recorded on August 24, 2012, in Document No. 2012-0761243, the Owners Association of Boulders Scottsdale, an Arizona nonprofit corporation, hereby approves and consents to the Recording of the foregoing Amended and Restated Condominium Declaration for The Boulders Casitas, a Condominium.

Dated as of the 24 day of February, 2014

OWNERS ASSOCIATION OF BOULDERS  
SCOTTSDALE, an Arizona nonprofit corporation

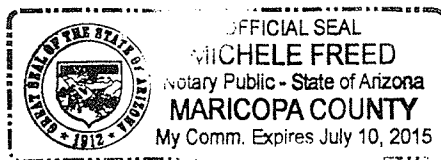
By: [Signature]  
Its: President

STATE OF ARIZONA           )  
  ) ss.  
County of Maricopa        )

On this 24 day of February, 2014, before me personally appeared Garrett Johnson, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

[Signature]  
Notary Public

Notary Seal:



## **EXHIBIT A**

### **Legal Description of Property Submitted to Condominium**

All property lying within the boundaries of the **AMENDED AND RESTATED CONDOMINIUM PLAT OF THE BOULDERS CASITAS**, according to the plat recorded in Book 679 of Maps, page 18, and Affidavit of Correction recorded in Document No. 2004-0490359, Official Records of the Maricopa County Recorder, Maricopa County, Arizona.